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Real Estate Appraiser Program Disciplinary Matrix

(Effective) November 19, 2004

PURPOSE:

The Real Estate Appraiser Disciplinary Matrix was developed through the combined efforts of the Real Estate Appraiser Program of the Business and Professions Division and the Attorney General's Office. The Matrix purpose is to provide standards for the equitable disposition of real estate appraiser disciplinary cases.

THE POINT SYSTEM:

The Matrix incorporates a "Point System" to assess adjudicated infractions of the Uniform Standards of Professional Appraisal Practice (USPAP), and Washington State licensing laws applicable to appraiser licenses. The Points Matrix (Appendix B) in conjunction with the Levels Matrix (Appendix C) point value assessment. The matrix provides an equitable and consistent means to formulate the appropriate disposition for a disciplinary case.

The Matrix can be used both prior to the hearing process to estimate the "Level" a case may be referred and again after adjudication for actual assessment of points. The mechanics of how the Matrix is applicable prior to the processing of alleged violations is explained by this example:

Example 1.

*Following completion of an investigation, the Program Manager determines that an appraiser has allegedly violated a number of USPAP standards and several license laws. A request is then made for a Statement of Charges to be prepared by the staff attorney. The alleged violation (s) estimated point value from Appendix B is referenced with Appendix C. For illustration purposes and case assessment only, assume a licensee hypothetically will accumulate 75 points after adjudication. In Appendix C, 75 points are "Level IV". A respondent licensee could appropriately be offered a **BAP**, or could request an **Administrative Hearing** (or a Settlement Conference may become an available option prior to a formal Administrative Hearing).*

Note: All settlement conference disciplinary sanction proposals made by a hearings examiner or staff attorney are for the limited purpose of effecting a stipulated settlement only. Such sanction proposals are not relevant in any subsequent formal proceeding before an Administrative Law Judge.

POINTS ASSESSMENT:

The recommended sanction(s) in the Matrix is subject to modifications according to the circumstances of each individual case. After a disciplinary action is adjudicated by either the Brief Adjudicated Proceeding (BAP), a Settlement Conference or an Administrative Hearing, then points will be assessed for Levels IV, V, and VI based upon Appendix B and C, and the adjudicated *Findings of Fact, Conclusions and ORDER*. Licensees who are sanctioned at level IV and above will have a 3 year probationary period in conjunction with any stayed suspension of three years or more. Points are assessed after adjudication according to the Matrix for/during this 3 year probationary period. The licensee's assessed points will decrease by 33.3 % per year for 3 years until they become null.

If a second complaint is adjudicated within 3 years of a previous Level IV, V, VI case then the licensee's remainder points will be considered from the previous case during the processing of the second case as explained in example 2:

Example 2.

Appraiser "A" commits an infraction in year "0", the final adjudication was January 10, year "2," (60 points were assessed at Level IV). "A" commits another infraction in year "3", and it is adjudicated January 10, year "4". "A" will have 20 points remaining in year "4" since the adjudicated date of the first case, $[60 - (20 \times 2) = 20]$. Assuming that 65 points may be assessed for the second case, "A" will have 85 points $(20 + 65)$ total if all alleged offenses are upheld in the adjudicated order. (85 points is at range Level V). Sanctions may appropriately be considered for a range Level V. This example illustrates how repeat violations and continued misconduct will result a higher sanction level.

The Disciplinary Matrix process is measurable and quantifiable. It will promote consistency in disciplinary sanctions. Points will not be assessed for Levels I, II, or III, and will not become an influence in sanction determination for subsequent complaint cases. However, those licensees who continue to violate licensing laws and standards at Level IV and above will qualify for more severe sanctions according to the guidelines in the Matrix.

FUTURE MATRIX REVISIONS:

The matrix is applicable to the most current publication of the Uniform Standards of Professional Appraisal Practice and Washington State laws. The Changes in USPAP by the Appraisal Foundation or Washington State laws will necessitate amendment/change to the matrix appendices. All changes or request for changes to the Matrix shall be submitted to the Real Estate Appraiser Program.

VALIDATIONS:

This document will undergo a series of validation questionnaires from the Appraiser Program, presented to stakeholders and state of Washington licensed appraisers. The Matrix **DRAFT** format will be in use by the Appraiser Program as a disciplinary guideline during the validation period effective from November 19, 2004 to March 31, 2005. It will be reviewed annually by March 31 of each year to insure compliance with USPAP and licensing laws.

APPENDIX PROVISIO:

Variations in the process of assessing point values using Matrix appendices should be minimal because the appendices are designed to be “user friendly”. The appendices closely align with USPAP Standards and Washington State law sections and sub-sections.

The Appraiser Business Procedures Investigation Request form, Appendix E, was approved in October 2004.

An explanation of the Brief Adjudicative Proceedings (BAP) and sample of applicable form(s) is at Appendix F. (*To be added*). The Brief Adjudicative Procedure is pending review and approval by the Department. It is anticipated it will be incorporated into the Department’s statutes by March 2005.

APPENDIX:

- A. Point Value Determinations**
- B. Complaint Point Assessment Guidelines**
- C. Placement Level Ranges for Adjudicated Cases**
- D. Disciplinary Matrix Assessment**
- E. Appraiser Business Procedures Investigation Request**
- F. Brief Adjudicate Procedure– Fact Sheet (*Pending*)**

Appendix A

POINT VALUE DETERMINATIONS

Scope: Point values are assessed for violations of each of the Uniform Standards of Professional Appraisal Practice (USPAP) Standard Rule (1,2,3), and **RULES** (Ethics, Competency, Departure, Supplemental, Jurisdictional). Points will also be assessed for the violation of the state of Washington laws applicable to appraisal practice: RCW 18.140, WAC 308.125, and RCW 18.235. Point assessment values are determined by comparing the **FINDINGS, CONCLUSIONS** and adjudicated **ORDER** to the Matrix (Appendix A,B,C) to derive a total point assessment.

SECTION I

1. Upon an adjudicated finding that a violation of a USPAP Standard Rule has occurred a **“Point Value”** may be assessed. Each of the Standards Rules below apply:

A. Standard Rule 1 is the substantive application of developing a competent appraisal of real property. Points are assessed for each appraisal noted in the adjudicated **FINDINGS** and **ORDER**.

1. Rule 1-1 (Total of 3 points, 1 per each):
 - a. Correctly recognize and employ methods and techniques necessary to produce a credible report (1 point).
 - b. Commission of a substantial error or omission that significantly affects the appraisal (1 point).
 - c. Rendering an appraisal in a careless or negligent manner, such as making a series of errors, the aggregate of which affects the credibility of the report (1 point).
2. Standard Rule 1-2 (Total of 8 points, 1 per each):
 - a. Identify the intended users of the report and the client (1 point)
 - b. Opinions and conclusions must be identified (1 point)
 - c. State the purpose of the assignment, define type of value developed, market value, whether the value is to be a most probable price (1 point)
 - d. Correctly identify the effective date of the opinions and conclusions (1 point)
 - e. Identify the characteristics of the property relevant to the purpose and intended use of the appraisal (1 point)
 - f. Identify the scope of work necessary to complete the assignment (1point)
 - g. Identify any extraordinary assumptions (1 point)
 - h. Identify any hypothetical conditions required for the assignment. (1point)

3. Standard Rule 1-3 (Total of 2 points, 1 per each):
 - a. Identify and analyze the effect on use and value of existing land (1 point)
 - b. Develop an opinion of the highest and best use of the real estate (1 point)
4. Standard Rule 1-4 (Total of 8 points, 1 per each):
 - a. When a sales comparison approach is appropriate, correctly determine and analyze comparable sales (1 point)
 - b. Analyze comparable cost data to estimate improvement costs if applicable (1 point)
 - c. When an income approach is applicable analyze all income and expense data and income potential based. Estimate capitalization rates and discount rate projections (1 point)
 - d. When developing an opinion of the value of a lease fee estate or a leasehold estate, an appraiser must analyze the effect on value if any, of the terms and conditions of the lease(s)(1 point)
 - e. Analyze the effect on value, if any, of the assemblage of the various estates, or component parts of a property and refrain from valuing the whole solely by adding together the individual values of the various estates or component parts. (1 point)
 - f. Analyze the effect on value of any anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements (1 point)
 - g. Analyze the effect on value of any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal (1 point)
 - h. Examine and have available for future examination proposed improvements: plans specifications, etc. (1 point)
5. Standard Rule 1-5 (Total of 2 points, 1 per each):
 - a. Analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal (1 point)
 - b. Analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal (1 point)
6. Standard Rule 1-6 (Total of 2 points, 1 per each):
 - a. Reconcile all data relative to quality and quantity of data available according to the approach used (1 point)
 - b. Reconcile the applicability or suitability of the approaches used to arrive at a conclusion of value (1 point)

B. Standard Rule 2 Applies to the Completion of the Real Property Appraisal Report – Completion of the assignment for a client.

1. Rule 2-1 (Total of 3 points , 1 per each):

- a. The report must be clear, accurate and not misleading (1 point).
 - b. The report must contain sufficient information for the intended user to understand the report (1 point).
 - c. The report must accurately disclose any extraordinary assumptions, hypothetical conditions or limiting conditions affecting value, (1 point)
2. Standard Rule 2-2 (Total of 36 points, 12 per each):
- a. The Self Contained report must be consistent with intended users by name or type [(USPAP 2-2 (a) (i) through (xii) apply)](12 points)
 - b. The Summary report must be consistent with the intended use of the appraisal[(USPAP 2-2 (b) (i) through (xii) apply)](12 points)
 - c. The Restricted Use Appraisal report must be consistent with the intended use of the appraisal [(USPAP 2-2 (c) (i) through (xii) apply)](12 points)

3. Standard Rule 2-3 (Total of 10 points):

Each written real property appraisal report must contain a signed certification by the appraiser. This rule applies to the Ethics Rule. An appraiser must state whether he did or not did not inspect the property. An appraiser must state if he relied upon other person(s) assisting in preparation of the report who do not sign the certification.

4. Standard Rule 2-4 (Total of 5 points):

Oral real property appraisal reports must, at a minimum, set forth the Standards in Rule 2-2(b).

C. Standard Rule 3

This rule applies to the review, analysis and preparation of a report attesting to the accuracy of another appraisers work; the appraisal development (Rule 1-1) and the written appraisal (Rule 2-2). The review report is frequently the basis for a complaint action which is brought forth against an appraiser. The accuracy of the review report is essential.

1. Standard Rule 3-1 (10 points, 5 per each)

- a. The reviewer must correctly analyze intended users, opinions and conclusions and the purpose of the assignment. (3 points)
- g. The reviewer must develop an appropriate or reasonable opinion(s) and conclusion(s), given the scope of work applicable in the assignment and develop the reasons for disagreement (3 points)

2. Standard Rule 3-2 (10 points, 5 per each)

- a. The reviewer must correctly report intended users, opinions and conclusions and the purpose of the assignment.
- d. The reviewer must correctly state the opinions, reasons, and conclusions required in Standard Rule 3-1(d-g), given the scope of work identified in compliance with Standard Rule 3-1(c).

3. Standard Rule 3-3 (10 points)

Each written real property appraisal review report must contain a signed certification by the appraiser. This rule applies to the Ethics Rule. An appraiser must state whether he did or did not inspect the property. An appraiser must state if he relied upon other person(s) assisting in preparation of the report who do not sign the certification.

4. Standard Rule 3-4 (5 points)

Oral real property review appraisal report must address the substantive requirements set forth in Rule 3-2.

SECTION II

USPAP addresses the ethical and performance obligations of appraisers through **DEFINITIONS**, Rules, Standards, Standard Rules, and statements. The following Rules are assigned the point values indicated below:

<u>RULE</u>	<u>Degree of Infraction*</u>		
	Minor	Major	Gross Misrepresentation
ETHICS	20-29 Points	30-39 Points	40-50 Points
COMPETENCY	10 Points	10 Points	10 Points
DEPARTURE	10 Points	10 Points	10 Points
JURISDICTIONAL	10 Points	10 Points	10 Points
SUPPLEMENTAL	5 Points	10 Points	15 Points

*Applicable to each appraisal. Subjective reasoning is applied related to the degree of harm caused to the client or the public.

SECTION III – Points Assessed for Violation of the Laws

See Appendix B and the applicable Law(s) according to the RCW and WAC.

DISCIPLINARY MATRIX - APPENDIX B

POINT ASSESSMENT GUIDELINES FOR EACH VIOLATION ADJUDICATED*

	POINTS
USPAP STANDARDS	ASSESSED
1-1	3
1-2	8
1-3	2
1-4	8
1-5	2
1-6	2
2-1	3
2-2	12,12,12
2-3	10
2-4	5
3-1	10
3-2	10
3-3	10
3-4	5

Notes:

*Points are estimated to determine a sanction Level Range and assessed upon conclusion of adjudicated proceedings.

Points values are indicated for each USPAP Standard, Rule, or RCW violation.

Infractions/violations not listed above are assessed on a case by case basis.

Assessment of violations prior to 2004 may or may not be comparable or applicable.

	POINTS
USPAP RULES	ASSESSED
Ethics	20/50
Competency	10
Departure	10
Jurisdictional	10
Supplemental	15
WA STATE LAWS [para]	ASSESSED
RCW 18.140.160 {2}	100
{3}	25,50,100
RCW 18.235.130 {1}	75
{3}	10
{5}	75
{6}	50
{7}	75
{9}	75
{11}	25
{12}	25
{13}	75
{14}	50
{2,4,8}	50-100
WAC 308-125-210	25

Prepared By: David Santhuff

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Disciplinary Matrix - Appendix C

PLACEMENT LEVEL RANGES FOR ESTIMATED OR ADJUDICATED COMPLAINT CASES

TOTAL POINTS (Estimated or Assessed)	100+						X
	95					X	
	90					X	
	85					X	
	80				X		
	75				X		
	50				X		
NO ASSESSMENT OF POINTS	40			X			
	30			X			
	25			X			
	20		X				
	15		X				
	10		X				
	0-9	X					
See Remarks Below		I	II	III	IV	V	VI
		Threshold Review	Investigation Section Legal Section	Legal Section	Legal Section	Attorney Gen Office	Attorney Gen Office
		Appraiser Unit Review Process & Investigation	Process SOC/BAP* or	Process SOC/BAP or	Process BAP or	Settlement Hearing or	Settlement Hearing or
	*		ALJ Hearing*	ALJ Hearing	ALJ Hearing	ALJ Hearing	ALJ Hearing
		Complaint Closed	Complaint Closed	Complaint Closed	Complaint Closed	Complaint Closed	Complaint Closed
		ESTIMATED OR ACTUAL SANCTION LEVEL					

***SOC - Statement of Charges, BAP - Brief Adjudicated Proceedings, ALJ - Administrative Law Judge**

Note: Level I complaints are verified for sufficiency, supportability, reliability according to thresholds or closed without action.

Level II, III, IV, complaints are reviewed, investigated, and processed according to thresholds or closed without action.

Level V, VI complaints are reviewed for sufficiency, investigated and referred to legal for Statement of Charges or Closed without further action.

Prepared By: David Santhuff, 7th Revision - October 27, 2004

BAP - Coordinated by the Business and Professions Real Estate/Appraiser Sub-Division hearings examiner.

Appendix D

DISCIPLINARY MATRIX ASSESSMENT

<u>RANGE</u>	<u>LEVEL</u>	<u>RECOMMENDED SANCTION OR ASSESSMENT</u>
0-10	I	None
11-24	II	BAP or ALJ Hearing Fine \$250.00-\$500.00, Complete one 7 hr. Course*
25-49	III	BAP or ALJ Hearing Fine \$500.00-\$1000.00, Complete a 15 hr. Course*
50-84	IV	BAP or ALJ Hearing Fine \$1,500.00-\$3,000.00, Complete one 15 hr. credit course* and a 15 hr. USPAP course*

* Not applicable for Continuing Education

NOTE: Respondent's with actual point assessments of 85+ points or anticipated point accumulations will be referred directly to an ALJ Hearing .

85-99	V	ALJ Hearing Fine \$3,000.00- \$5,000.00 Completed 15 hour USPAP Course and/or Suspension of 6 months to one year.
100+	VI	ALJ Hearing Fine \$5,000-\$10,000.00 Complete two 15 hour Courses, and one 15 hour USPAP Course and/or Suspension 6 months to 1 year and/or license revocation.



APPRAISER BUSINESS PRACTICES INVESTIGATION REQUEST

Use this form to request a review or investigation of alleged violation(s) of appraiser licensing laws in the State of Washington under the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP), or the Revised Code of Washington (RCW), Washington Administrative Code (WAC) applicable to the licensing or business practices of appraisers.

Instructions: Complete all sections and attach a written narrative that explains the alleged violation of USPAP or licensing law applicable to the appraiser's work or business practices. Please provide copies of appraisals, contracts, or assignment agreements supporting the specific allegations. Mail this form and attachment(s) to the above address.

Complainant Information

COMPLAINANT'S NAME		HOME TELEPHONE NO. ()
STREET ADDRESS		WORK TELEPHONE NO. ()
P.O. BOX (IF ANY)		FAX NO. ()
CITY	STATE	ZIP CODE

Licensee Information

LICENSEE'S NAME		HOME TELEPHONE NO. ()
BUSINESS NAME		WORK TELEPHONE NO. ()
STREET ADDRESS		FAX NO. ()
P.O. BOX (IF ANY)		
CITY	STATE	ZIP CODE

Communications

If you answer "yes" to either of the following questions, please provide details in your written narrative.

Have you attempted to resolve your complaint with the licensee?

☐ Yes ☐ No

Did you advise the licensee that you were considering filing a complaint with the Department?

☐ Yes ☐ No

The Department of Licensing (DOL) is authorized to review, investigate, or close alleged complaints of appraiser misconduct, which may or may not result in sanctions imposed by the Director. DOL does not have the authority to recover funds from appraisers or award damages to complainants for incompetent or inaccurate appraisals that may have caused harm to the complainant. Complainants are advised to seek the advice of legal counsel for recovery purposes.

I certify (*or declare*) under penalty of perjury under the laws of the State of Washington that the foregoing and any attachments hereto, which are incorporated herein by reference, are true and correct.

Signature **X** _____ Date _____

Printed Name _____ County _____